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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,559	03/23/2001	Anthony Frank Menninger	41556/04727 (RSIIP073)	7561
22428	7590	04/07/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			GORT, ELAINE L	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,559

Applicant(s)

MENNINGER, ANTHONY FRANK

Examiner

Elaine Gort

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 13-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5, 8, 10.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Claims 1-6 and 13-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 12.

Double Patenting

2. Claims 7-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all the claims filed in the following Applications because they are not patentably distinct:

09/815590
09/815660
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09/815759
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09/816507
09/816536
09/816555
09/816560
09/816561
09/816567
09/816582
09/816881
09/816922
09/816944

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 7-12 recite a system comprising logic per se. If logic is merely computer code, then the method fails to comprise any physical elements and the claims are directed toward a computer program claimed as a computer listing per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. See MPEP 2106 IV.B.1(a)

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if claims 7-12 merely recite computer code and thus the system fails to comprise any physical elements, which is inconsistent with the preamble which claims a system.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noori (Production and Operations Management) in view of Microsoft Computer Dictionary.

Noori discloses the claimed system for product managing a supply chain utilizing a network including logic for: receiving data from a plurality of outlets of a supply chain utilizing a network, the data relating to an amount of products sold by the outlets (for example see page 599 KG Men's store example discussing a system capable of tracking the sale of a pair of jeans); and generating electronic order forms based on data for ordering products from a distributor of the supply chain, wherein the electronic order forms indicate an amount of the products ordered by each outlet (for example see details on purchase orders on page 599 and KG Men's Store example where an order

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for a replacement pair of jeans is automatically generated on page 599); but is silent regarding providing access to the data utilizing a network-based interface equipped to handle secure sockets layer (SSL) protocol. Microsoft Computer Dictionary discloses that it is known in the art to provide a SSL protocol to ensure security and privacy in Internet communications by authentication of client, server, or both, as well as encryption during a communication session. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the product tracking system of Noori with the SSL protocol of Microsoft Computer Dictionary, in order to ensure security and privacy in Internet communications by authentication of client, server, or both, as well as encryption during a communication session.

Regarding the use of passwords, user names, timing out, encryption and the Internet, Microsoft Computer Dictionary discloses that it is known in the art of computer networking to use passwords, user names, timing out, encryption and the Internet to provide means for allowing only authorized users access to a computer system or files, to allow a computer system to break a connection if an expected event does not take place within an expected amount of time to protect itself against crackers, to encode data to prevent unauthorized access, and to provide high speed and reliable communications, respectively. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the product tracking system of Noori with the passwords, user names, timing out, encryption and the Internet as taught by Microsoft Computer Dictionary, in order to provide means for allowing only authorized users access to a computer system or files, to allow a computer system to

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break a connection if an expected event does not take place within an expected amount of time to protect itself against crackers, to encode data to prevent unauthorized access, and to provide high speed and reliable communications, respectively.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

EG



March 29, 2004